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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,718	09/18/2003	Valery Clement	OK-23031 (114400-7)	9020

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EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/666,718	Applicant(s) CLEMENT, VALERY	
	Examiner Bret C Hayes	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 1 and 8-10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/18/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claims 1 and 8 – 10 are objected to because of the following informalities: claim 1, line 7, claim 8, line 1, and claim 9, line 1, “it” is objected to as being unclear – the claims should be amended to positively recite the limitation; further claim 1, line 5, “this” should be replaced with --the-- or --said--; claims 8 – 10, line 2 of each, “their” is objected to and should also be amended to positively recite the limitation. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 1 – 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites the limitations "the hind legs" in line 1, "the rear part" and "the cannon" in line 5, "the bend" in line 6, and "the limb joint" in lines 6 and 7. There is insufficient antecedent basis for these limitations in the claim.

5. Claims 2 – 5, lines 1 and 2 for claims 2 – 4 and line 2 for claim 5, recite the limitation "the protection". There is insufficient antecedent basis for this limitation in the claims.

6. Claim 2 further recites the limitation "the fetlock joint" in line 2. There is insufficient antecedent basis for this limitation in the claim.

7. Claims 3 and 4 further recite the limitations "the front" in line 2, and "the hoof" in line 3. There is insufficient antecedent basis for these limitations in the claims.

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8. Claims 8 – 10 recite the limitations "the materials" in line 1 and "their properties" in line 2. There is insufficient antecedent basis for these limitations in the claims.
9. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Pellew.
12. Re – claim 1, Pellew discloses a protective device, Fig. 3, for example, for protecting hind legs of a horse comprising: a rigid casing, set forth at col. 2, line 14; a padded lining, set forth at col. 3, line 30 – inner layer 20; retaining straps 31; the device being shaped to a rear part of a cannon and, when fastened in place, rising up to above a bend of a limb joint, the rigid casing bearing above the limb joint against which the casing rests, as best seen in Fig. 1.
13. Re – claims 6 and 7, Pellew discloses polyvinyl-chloride and nylon netting, which makes a flexible plastic – PVC – and would be a fiber-reinforced polymer.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claims 2 – 5 and 8 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pellew in view of McKenzie.

16. Re – claim 2, Pellew discloses the invention substantially as claimed as applied above. However, Pellew does not disclose wherein a lower end of the device comprises an articulated part corresponding to a fetlock joint.

McKenzie teaches an articulated part, between 1a and 2a, and set forth at line 43, in the same field of endeavor for the purpose of allowing unrestrained use of the ankle (fetlock) joint when the boot is worn.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Pellew to include the articulated joint as taught by McKenzie in order to allow unrestrained use of the ankle.

17. Re – claim 3, Pellew discloses the invention substantially as claimed. However, Pellew does not disclose wherein a lower end of the device comprises, toward a front, a widened part corresponding to a flare of a hoof.

McKenzie teaches a lower end of the device comprising, toward a front, a widened part 1 corresponding to a flare of a hoof in the same field of endeavor for the purpose of protecting the hoof.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Pellew to include the widened part as taught by McKenzie in order to protect the hoof.

18. Re – claim 4, Pellew in view of McKenzie discloses the invention substantially as claimed.

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McKenzie further teaches the widened part as applied to claim 3 above.

19. Re – claim 5, Pellew discloses the invention substantially as claimed as applied above. However, Pellew does not disclose the retaining straps **31** being secured by fastening to each other.

McKenzie further teaches straps **3, 4, 6, 7** being secured by fastening to each other in the same field of endeavor for the purpose of attaching the device to the leg of a horse.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Pellew to include the straps being secured by fastening to each other as taught by McKenzie in order to attach the device to the leg of a horse.

20. Re – claims 8 – 10, Pellew discloses the invention substantially as claimed as applied above. However, Pellew does not explicitly disclose wherein materials making up the device maintain physical properties relating to the materials in a range of temperatures of between -20 and 45° C.

21. This claimed limitation could be approached several ways.

First, even though Pellew does not explicitly disclose the ability of the materials to maintain properties, the physical properties of the materials selected by Pellew would certainly maintain the properties within this limited range of temperatures, since 1) the range is well within common knowledge and experience of ordinary skill in the art, and 2) PVC (along with the other materials used) is known to maintain their properties throughout the given temperature range. If these materials failed within normally experienced temperatures, such as -20 to 45° C (approximately -4° to 113° F), the materials would no longer be chosen.

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Second, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose materials that would maintain their properties within this range, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416.

Third, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose materials functioning within this range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

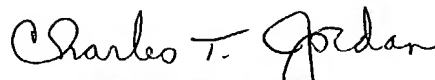
Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306 – 4159. The fax number is (703) 872 – 9306.

bh

4/3/04


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